

REMARKS

The above amendments and these remarks are responsive to the final Office action dated December 28, 2005, and support the accompanying Request for Continued Examination as a submission under 37 C.F.R. § 1.114(c). Claims 1-24 and 40-53 are pending in the application. In the Office action, the Examiner (1) objected to claims 8-11, 16, 22, 23, and 47-50 (as being dependent upon a rejected based claim); and (2) rejected claims 1-7, 12-15, 17-21, 24, 40-46, and 51-53 as follows:

- Claims 1-7, 12-15, 17-21, 24, 40-46, and 51-53 were rejected provisionally for obviousness-type double patenting over claim 4 of co-pending U.S. Patent Application Serial No. 10/717,399 ('399) in view of U.S. Patent No. 6,340,362 to Pierer et al. ("Pierer") alone or in combination with U.S. Patent No. 5,709,686 to Talos et al. ("Talos") or U.S. Patent No. 6,096,040 to Esser ("Esser");
- Claims 1, 2, 4, 6, 7, 13, 14, 18-20, 40, 41, 43, 45, and 46 were rejected under 35 U.S.C. § 102(e) as being anticipated by Pierer;
- Claims 5, 21, 44, 52, and 53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pierer;
- Claim 15 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Pierer in view of Esser; and
- Claims 3 and 42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pierer in view of Talos.

Applicants traverse the rejections, contending that rejected claims 1-7, 12-15, 17-21, 24, 40-46, and 51-53 are neither anticipated nor obvious. Nevertheless, to expedite issuance of a patent, applicants have (1) canceled pending claims 1-24 and 40-53, without prejudice, and (2) added new claims 54-92 to more particularly point out and distinctly claim aspects of the invention recited in the "allowable" (objected to) claims. In view of the above amendments and these remarks, applicants respectfully request consideration of the new claims, and prompt issuance of a Notice of Allowability.

I. Request for Continued Examination

Applicants are submitting herewith a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114. This Request complies with the requirements of 37 C.F.R. § 1.114. In particular:

- (i) Prosecution in the application is closed, since the last Office action was a final Office action under 37 C.F.R. § 1.113.
- (ii) The Request is accompanied by a submission as set forth at 37 C.F.R. § 1.114(c), specifically, the amendments and remarks set forth herein.
- (iii) The Request is accompanied by the fee set forth at 37 C.F.R. § 1.17(e).

Accordingly, applicants respectfully request grant of their Request for Continued Examination.

II. Double Patenting

Claims 1-7, 12-15, 17-21, 24, 40-46, and 51-53 were rejected provisionally for obviousness-type double patenting over claim 4 of copending U.S. Patent Application Serial No. 10/717,399 ('399) in view of Pierer alone or further in view of Esser or Talos. However, the present amendment cancels each of the rejected claims, rendering all of the double patenting rejections moot.

III. Claim Rejections – 35 U.S.C. §§ 102 and 103

The Examiner rejected claims 1, 2, 4, 6, 7, 13, 14, 18-20, 40, 41, 43, 45, and 46 under 35 U.S.C. § 102(e) as being anticipated by Pierer, and claims 3, 5, 15, 21, 42, 44, 52, and 53 as being obvious over Pierer alone or in view of Talos or Esser. Applicants traverse the rejections. None of these references, either alone or in combination, teaches or suggests each of the elements of any of these claims. For example, each of

the pending claims recites a joint with a “fixed configuration,” and the rejections (including each of the double patenting rejections) rely on Pierer to teach a joint with a fixed configuration. However, Pierer does not teach or suggest a joint with a fixed configuration. Instead, Pierer involves a bone plate with parts that are movable relative to one another even after the bone plate is fully installed. This assertion is supported by Pierer: “the bone portions interconnected by the plate can maintain their natural, anatomical relative movement” (col. 2, lines 36-39). The rejections thus are improper.

Nevertheless, to expedite issuance of a patent, applicants have canceled the rejected claims, and added new claims based on dependent claims that the Examiner indicated were allowable over the prior art. Applicants reserve the right to pursue the canceled claims with or without amendment in the future.

IV. Allowable Subject Matter

The Examiner stated that claims 8, 9, 16, 47, and 48, among others, would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants have amended these “objected to” claims to make them allowable, as described below.

V. Claim Amendments

Applicant has, for reasons described above, (1) canceled pending claims 1-24 and 40-53, without prejudice, and (2) added new claims 54-92.

The new claims include five independent claims (54, 64, 70, 74, and 86), as well as thirty-four dependent claims (55-63, 65-69, 71-73, 74-85, and 87-92) depending therefrom, which more particularly point out and distinctly claim aspects of the invention

recited in claims that the Examiner indicated were allowable (1+8, 1+9, 13+16, 40+47, and 40+48, respectively).

Exemplary support for the new claims is shown, without limitation, in the following table:

| New Claim | Support |
|------------------|----------------|
| 54 (Independent) | Claims 1+8 |
| 55 | Claim 2 |
| 56 | Claim 3 |
| 57 | Claim 4 |
| 58 | Claim 5 |
| 59 | Claim 6 |
| 60 | Claim 7 |
| 61 | Claim 10 |
| 62 | Claim 11 |
| 63 | Claim 12 |
| 64 (Independent) | Claims 1+9 |
| 65 | Claim 4 |
| 66 | Claim 5 |
| 67 | Claim 6 |
| 68 | Claim 8 |
| 69 | Claim 12 |
| 70 (Independent) | Claims 13+16 |
| 71 | Claim 14 |
| 72 | Claim 15 |
| 73 | Claim 17 |
| 74 (Independent) | Claims 40+47 |
| 75 | Claim 41 |
| 76 | Claim 42 |
| 77 | Claim 43 |
| 78 | Claim 44 |
| 79 | Claim 45 |
| 80 | Claim 46 |
| 81 | Claim 49 |
| 82 | Claim 50 |
| 83 | Claim 51 |
| 84 | Claim 52 |
| 85 | Claim 53 |
| 86 (Independent) | Claims 40+48 |
| 87 | Claim 4 |
| 88 | Claim 5 |
| 89 | Claim 6 |

| New Claim | Support |
|-----------|----------|
| 90 | Claim 11 |
| 91 | Claim 12 |
| 92 | Claim 47 |

VI. Conclusion

Applicants believe that this application is now in condition for allowance, in view of the above amendments and remarks. Accordingly, applicants respectfully request that the Examiner issue a Notice of Allowability covering the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact Stan Hollenberg (Reg. No. 47,658) or the undersigned attorney of record, both at 503-224-6655.

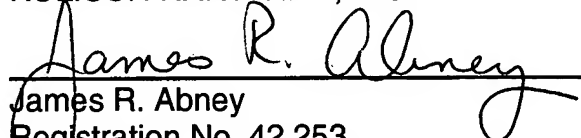
Respectfully submitted,

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on March 7, 2006.


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